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CASES: Page(s)

ABF Freight System, Inc. v. Tax Div. of the Ark. Public Service Comm'n, 787 F.2d 292 (8th Cir. 1986) 14

Alabama Great Southern v. Eagerton, 663 F.2d 1036 (11th Cir. 1981) 25

Aloha Airlines, Inc. v. Director of Taxation of Haw., 464 U.S. 7 (1983) 21

Arizona v. Atchison, Topeka & Santa Fe R.R. Co., 656 F.2d 398 (9th Cir. 1981) 19

Arizona Public Service Co. v. Snead, 441 U.S. 141 (1979) 19

Arkansas-Best Freight System, Inc. v. Lynch, 723 F.2d 365 (4th Cir. 1983) 14

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Burlington Northern R.R. Co. v. Oklahoma Tax Comm., 481 U.S. 454 (1987) 2,12,20,21

Clinchfield R.R. Co. v. Lynch, 700 F.2d 126 (4th Cir. 1983) 9,14

Complete Auto. Transit, Inc. v. Brady, 430 U.S. 274 (1977) 18

Davis v. Michigan Dep't of Treasury, 489 U.S. 803 (1989) 21

Department of Revenue, State of Fla. v. Trailer Train Co. 830 F.2d 1567 (11th Cir. 1987) 1,6,14,18,26

Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824) 18

Table of Authorities Continued

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Kansas City Southern Ry. Co. v. McNamara, 817 F.2d 368 (5th Cir. 1987) 7,21,22,24,25,26

Minneapolis Star & Tribune Co. v. Minnesota Comm. of Revenue, 460 U.S. 575 (1983) 27

Norfolk & Western Ry. Co. v. Missouri State Tax Comm'n, 390 U.S. 317 (1968) 18

Ogilvie v. State Bd. of Equalization, 492 F. Supp. 446 (D.N.D. 1980), *aff'd*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981) 27

Ogilvie v. State Bd. of Equalization, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981) 2,6,11,14,17,24,26

Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945) 19

Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949) 27

Southern Ry. Co. v. State Bd. of Equalization, 715 F.2d 522, (11th Cir. 1983), *cert. denied*, 465 U.S. 1100 (1984) 20

Trailer Train Co. v. Leuenberger, 885 F.2d 415 (8th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989) 1,6,14,25,27

Trailer Train Co. v. State Bd. of Equalization, 697 F.2d 860 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983) 26

Trailer Train Co. v. State Tax Comm'n, 929 F.2d 1300 (8th Cir.), *cert. denied*, 112 S. Ct. 169 (1991) 25

Union Pacific R.R. Co. v. Department of Revenue of Or., 920 F.2d 581 (9th Cir. 1990) 20

Western Air Lines, Inc. v. Board of Equalization, 480 U.S. 123 (1987) 22,26

Wisconsin Dept. of Revenue v. William Wrigley, Jr., Co., 112 S. Ct. 2447 (1992) 18

Table of Authorities Continued

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STATUTES:

Section 306, 49 U.S.C. § 11503 .... *passim*

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Or. Rev. Stat. § 307.030 10

OTHER AUTHORITY:

Appraisal Institute, *The Appraisal Of Real Estate* (10th ed. 1992) 9

Bowman et al., *Current Patterns and Trends in State and Local Intangibles Taxation*, Nat'l Tax J. (December 1990) 8

Bureau of Census, U.S. Dept. of Commerce, 1977 *Census of Governments* No. 1 (1978) 10

Bureau of Census, U.S. Dept. of Commerce, 1987 *Census of Governments* No. 1 (1989) 6,8,9,10,11,15

Manvel, *Fiscal Facts & Figures, A Property Tax Update*, Tax Notes 609 (February 3, 1992) 16

Netzer, Brookings Institution, *Economics Of The Property Tax* 138-149 (1966) 8,9

Netzer, Urban Research Center Of New York University, Personal Property Taxation In The United States (1985) (Table 1) 10

Oregon Dep't of Revenue, *Oregon's Property Tax System: The Disintegration Continues* 49 (November 1988) 8,10,11,12

Senate Committee on Commerce, *Discriminatory State Taxation of Interstate Carriers*, S. Rep. No. 1483, 90th Cong., 2d Sess. 10-11 (1968) (commenting on S. 927) 13

Senate Committee on Commerce, *Discriminatory State Taxation of Interstate Carriers*, S. Rep. No. 630, 91st Cong., 1st Sess. 11 (1969) (commenting on S. 2289) 13

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U.S. Advisory Comm. Of Intergovernmental Relations, *Significant Features Of Fiscal Federalism* (1992) 9

U.S. Advisory Comm. On Intergovernmental Relations, *The Role of the States In Strengthening The Property Tax* (1963) 8,9

Webster's New Twentieth Century Dictionary Unabridged (2d ed. 1983) 19

INTEREST OF THE AMICUS CURIAE

The Railway Progress Institute ("RPI") is a non-profit association of companies that are closely connected with the railroad industry and that have a common interest in maintaining a strong national rail transportation system.[1] RPI is comprised primarily of companies that manufacture or supply railroad equipment or that furnish fleets of specialty railroad cars for use by railroads. The American Short Line Railroad Association ("ASLRA") is a non-profit association of over 400 "short line" railroads.[2] Short lines are small businesses that maintain and operate short portions of rail right-of-way which provide vital links between the major railroads and shippers throughout the nation. Short lines are an increasingly important component of the national transportation system because they fill a need to deliver rail services in areas the major railroads do not, or cannot, serve.

RPI and ASLRA file this brief[3] to urge that Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976[4] continue to be construed, as it has been by the lower courts, to protect railroad property from the destructive effect of discriminatory property taxation that necessarily arises when rail cars are taxed in full while most other commercial and industrial tangible personal property within a state remains untaxed.[5]

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[1] RPI members are listed in Appendix A to this brief; respondents are members of RPI.

[2] ASLRA members are listed in Appendix B to this brief. Some of the respondents own short lines and are members of ASLRA.

[3] The petitioner and respondents have consented to the filing of this brief. Letters of consent are on file with the clerk.

[4] Pub. L. No. 94-210, § 306, 90 Stat. 54, (1976) currently codified at 49 U.S.C. § 11503 (hereinafter, cited in its codified form as "Section 11503" and in its original text as "Section 306").

[5] *See Trailer Train Co. v. Leuenberger*, 885 F.2d 415 (8th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Department of Revenue, State of*

Section 11503 embodies a national policy of tax equality for railroads and rail property, which Congress found it necessary to enact in 1976 in order to rescue railroads from pervasive state and local tax discrimination. *Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454 (1987). The basic policy of Section 11503 is jeopardized by the position of Oregon, and the other state interests joining it as amici, which argues that discrimination by exemption is immune from remedy under Section 11503. If accepted, this view would open a loophole that would seriously undermine the efficacy of the statute. The rational application of Section 11503 is also threatened by certain aspects of the analysis of the court of appeals below. As the states argue, the Ninth Circuit analysis, if applied literally, might absolutely prohibit any property taxation of any railroad property, real or personal.

Section 11503 should not be construed, at either extreme, to be completely indifferent to massive exemption of non-railroad property or to totally prohibit property taxation of railroad property. Rather, Section 11503 should be construed to assure the equality of tax treatment of rail property which is shown to be absent in Oregon by stipulations that rail cars are taxed at full value while approximately 75% of all other commercial and industrial tangible personal property is not taxed. (Stip. ¶¶ 29, 37, J.A. at 18-19).

On this record, this Court should hold that a state's imposition of a full property tax on rail cars violates Section 11503(b)(4) when, at the least,[6] most of the other

Fla. v. Trailer Train Co., 830 F.2d 1567 (11th Cir. 1987); *Burlington Northern R.R. Co. v. Bair*, 766 F.2d 1222 (8th Cir.1985); *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981).

[6] The facts presented here involve non-taxation of far more than most other tangible personal property. Accordingly, in the view of RPI and ASLRA, this case on its facts does not present the question of the

commercial and industrial tangible personal property within that state remains untaxed by reason of exemption, under-reporting or under-assessment. This Court should affirm on this basis. Such a holding will allow a remedy for the personal property tax discrimination existing in Oregon, while preserving the ability of state and local governments to impose nondiscriminatory taxes on railroad real property.

Accordingly, RPI and ASLRA submit that the result of the case below should be affirmed, but the following aspects of the analysis of the Ninth Circuit should be modified:

First, the analysis that compared respondents' rail cars to both real and personal property should be rejected in favor of the more targeted analysis employed by the other federal courts of appeals. The taxation of railroad tangible personalty should be compared to the taxation of other business tangible personal property only.

Second, having adopted the foregoing analysis, this Court should not reach the Ninth Circuit's unnecessary generalization that discrimination arises whenever any non-railroad property is exempt. Instead, the Court should rule that Section 11503 requires railroads to be taxed only by taxes of general applicability that are, in fact, generally applied. At the least, this requirement is violated for a personal property tax on rail cars if most other business personal property is not taxed.

SUMMARY OF ARGUMENT

1. An analysis of tax discrimination against rail cars under Section 11503 should be based on comparison to

minimum amount of non-taxation of other tangible personal property which must exist before discrimination against rail cars may be found. The issue of a precise line of demarcation between discriminatory and non-discriminatory taxes is not truly ripe here and should be left to an appropriate case for decision.

other business tangible personalty only. Such a comparison, which has been adopted by the other lower courts, properly recognizes the general classification of property for tax purposes into three categories—real, tangible personal and intangible personal. These classifications are universally made because there are significant differences in the characteristics of real, tangible personal and intangible property which are important for tax purposes. Moreover, personal property represents a decreasing portion of the property tax base nationwide as many states have enacted complete exemptions of personal property or expanded their lists of partial exemptions. The record here, which shows that 75% of Oregon's business tangible personal property is untaxed, exemplifies the trend. Rail personal property, including rail cars, is excluded from this trend because, unlike most business property, it is centrally assessed. These distinctions require a separate analysis of tangible personal property.

Although the legislative history of Section 11503 is usually rendered redundant by the plain text of the statute, and is often inconclusive, legislative history explicitly reinforces the conclusion that personal property should be separately analyzed.

A combined real and tangible personal comparison, as urged by Oregon and adopted *arguendo* by the court of appeals, must be rejected on practical grounds. It tends to obscure discrimination against personal property by hiding it within the much larger mass of real property taxation. Furthermore, it improperly expands the relief to all rail property even though discrimination is found only because of the non-taxation of personal property.

A precisely targeted personal-to-personal comparison recognizes long-standing property tax classifications and current trends. It accords with legislative intent and avoids impractical results. As the lower courts have generally

recognized, it is the proper approach to analysis of discrimination against rail personalty.

2. Tax discrimination against rail cars under Section 11503 is shown, at the least, where most other tangible business personalty is not taxed. The stipulated facts here, which show railcars are fully taxed but 75% of the non-rail tangible personal property to be untaxed, lie at the core of the discrimination prohibited by Section 11503(b)(4). These egregious facts render the overly broad generalization of the court of appeals, that "any" exemption violates Section 11503 unnecessary to a resolution of this case.

The assertion of Oregon and several amici that they are protected by a deferential analysis under standards employed in constitutional cases is contradicted by the specific statutory prohibitions set forth in Section 11503.

Likewise, the hypothetical defense posited by the United States in its brief, consisting of unspecified justifications never yet urged by Oregon, is unsupported by the statute. Justification of taxes which result in discrimination against railroads is not contemplated by Section 11503, which in its original language at Section 306(1) included a specific declaration that such practices constituted "unreasonable and unjust" burdens on interstate commerce. In any case, even if justifications are possible, none has been or could be offered for the massively disparate treatment which Oregon has elected to impose upon rail cars.

Section 11503 prohibits taxes which result in discrimination against railroads. In a myriad of cases the lower courts have required that taxes be generally applicable and generally applied in order to be nondiscriminatory. The outer boundaries of these concepts have not been defined, and need not be defined here, because a personal property tax must be considered discriminatory when it is is imposed on rail cars but not on 75% of other business tangible personal property.

ARGUMENT

I. RAILROAD TANGIBLE PERSONALTY SHOULD BE COMPARED TO OTHER COMMERCIAL AND INDUSTRIAL TANGIBLE PERSONALTY ONLY

RPI and ASLRA urge this Court to adopt other commercial and industrial tangible personal property as the proper comparison class for the purpose of analysis in this case. Such an analysis is consistent with the universal practice of classifying property for property tax purposes into three broad categories—real, tangible personal, and intangible personal.[7] It also accords with the expressed intent of Congress to recognize such classifications.

The combined real and tangible personal analysis urged by Oregon below, and partially accepted *arguendo* by the Ninth Circuit, disregards major differences in character and tax treatment between real and personal property. This, in turn, leads to strained and impractical results such as the specter raised by Oregon in this Court that its substantial non-taxation of personal property might be used as a basis to prohibit taxation not only of railroad personalty, but of railroad realty as well.

For these reasons the other lower courts, unlike the Ninth Circuit, have focused their inquiry solely on personal property in cases such as this. *Trailer Train Co. v. Leuenberger*, 885 F.2d 415 (8th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Department of Revenue, State of Fla. v. Trailer Train Co.*, 830 F.2d 1567 (11th Cir. 1987); *Burlington Northern R.R. Co. v. Bair*, 766 F.2d 1222 (8th Cir. 1985); *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981).

[7] *See e.g.*, 2 Bureau of the Census, U.S. Department of Commerce, 1987 *Census of Governments* No. 1, App. E, at pp. 2-3 (1989) (definitions of "property", "real property", "tangible personal property" and "intangible personal property".)

This analytic framework has proven workable in identifying obvious discrimination against railroad personal property and has likewise served as a sound basis to limit the relief in such cases to railroad personalty. By way of contrast, the blunt instrument of combined analysis appears to offer but two unappealing and extreme choices within its analytic framework. The Court must either disregard personal property tax discrimination or prohibit railroad property taxation altogether.[8]

In support of their position on this fundamental issue, RPI and ASLRA will discuss (a) the background of classification and treatment of personal property for tax purposes, (b) the pertinent legislative history of Section 11503, and (c) the practical effects of the selection of a comparison class on the analysis of the issues here.

A. BACKGROUND

The most important reason for separating the analysis of property among real, tangible personal, and intangible property categories under Section 11503 is a practical one. Such categories reflect fundamental distinctions that are universally recognized in the way property is listed, assessed and taxed both in Oregon and nationwide.

Real property substantially predominates the nationwide property tax base. United States Bureau of Census esti-

[8] A third choice might theoretically exist in that the Court might determine and decree a percentage level of taxation of railroad property that was somehow consistent with the tax burden on all other property. In effect, the Court would be forced to determine what it considered to be a proper level of tax. The lower courts have avoided such an approach, and it is fraught with serious practical difficulties. *See, e.g.*, *Kansas City Southern Ry. Co. v. McNamara*, 817 F.2d 368, 377 (5th Cir. 1987). For example, how should untaxed intangibles be valued and included? How should partially taxed property or property subject to other taxes such as standing timber be considered? No good reason exists to enter such a thicket of uncertainty, for the sake of a broad analysis when a more narrow and precise method of analysis is available which conforms to the language and intent of Section 11503.

mates for 1986 show that 85.2% of the total nationwide property tax base was composed of locally assessed real property. Locally assessed tangible and intangible personal property was only 9.8% of the total.[9] Centrally assessed property, primarily utilities including railroads, accounts for the remaining 5%.[10] Intangibles represent a negligible share of the personal property tax base total as states have increasingly abandoned their efforts to impose property taxes on intangibles.[11]

Real property and tangible and intangible personal property have different characteristics that have led to ever increasing differences in their actual property tax treatment. Fixed and immovable, real property is easier to locate, list and value equitably than is personal property. Accordingly, the burdens of, and resistance to, personal property tax administration and reporting are considerably greater than those that apply to real property.[12]

For example, simple geography will suffice to assure that all real property is listed and taxed. Not so with personal property, and especially intangibles which can be

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[9] 2 Bureau of the Census, *supra* note 7, at VII-VIII (Table A and Table B).

[10] The utility assessments combine both real and personal property. *Id.* at XII-XIII.

[11] *Id.* at 135 (Table 14). *See also* John H. Bowman et al., *Current Patterns and Trends in State and Local Intangibles Taxation*, Nat'l Tax J. (December 1990). Oregon is among the states that do not tax intangibles. An estimated $65.0 billion in Oregon intangibles went untaxed in 1988. (Stip. ¶ 41, J.A. at 19). *See also* Oregon Dep't of Revenue, *Oregon's Property Tax System: The Disintegration Continues* 49 (November 1988) (A copy of this report appears as Addendum E to Plaintiffs' Pretrial Reply Brief, filed September 29, 1989 in the district court).

[12] 1 U.S. Advisory Comm. on Intergovernmental Relations, *The Role of the States in Strengthening the Property Tax* 29-32 (1963); Dick Netzer, Brookings Institution, *Economics of the Property Tax* 138-149 (1966).

extremely difficult to locate and list for assessment.[13] Real estate appraisal techniques are well developed and can be applied consistently to all kinds of real property.[14] Personal property is more diverse than real property, and some kinds of personal property are extremely difficult to assess uniformly.[15] Techniques such as sales assessment ratio studies, which are vital to equitable real property tax administration, are not available in the personal property tax arena. *Cf. Clinchfield R.R. Co. v. Lynch*, 700 F.2d 126, 133 (4th Cir. 1983). The difficulties of personal property taxation are such that by 1963, one study concluded, "[o]ne of the conspicuous features of many personal property tax systems is the extent to which they have become legal fictions."[16] Both as a result of political choice to avoid the difficulties inherent in personal property taxation, and as a result of the impact of such difficulties, the portion of the nationwide total property tax base which consists of locally assessed personal property declined from 17.2% in 1956 to just 9.8% in 1986.[17]

A substantial reason for the relative decline in the personal property tax base has been the ever-increasing numbers of states that have enacted a total exemption of tangible personal property or have expanded their lists of partial exemptions. As of 1991, ten states essentially exempted all personal property.[18] There were but four such

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[13] 1 U.S. Advisory Comm. on Intergovernmental Relations, *supra* note 12, at 31-32.

[14] *See, e.g.* Appraisal Institute, *The Appraisal of Real Estate* (10th ed. 1992).

[15] Netzer, *supra* note 12, at 182.

[16] 1 U.S. Advisory Comm. on Intergovernmental Relations, *supra* note 12, at 31.

[17] 2 Bureau of Census, *supra* note 7, at VIII (Table B).

[18] Delaware, Hawaii, Illinois, Iowa, Minnesota, New Hampshire, New York, North Dakota, Pennsylvania and South Dakota. *See* 1 U.S. Ad-

states in 1977.[19] Many other states have considerably narrowed the personal property tax base in recent decades by exemption of various categories of property. For example, between 1959 and 1984, the number of states taxing business inventories decreased from 46 to 20 and the number of states taxing agricultural personalty decreased from 42 to 25.[20]

By way of contrast, commercial and industrial real property is taxed in every state. Real estate exemptions typically apply to non-profit and governmental owners, but few outright exemptions of business realty apply across the board.[21]

The stipulated situation in Oregon reflects the overall trend in microcosm. An Oregon statute purports to fully tax personal property "in equal and ratable proportion." Or. Rev. Stat. § 307.030. However, Oregon separately classifies personal property,[22] and its actual treatment of personal property is quite different from its treatment of real property. Only $4.8 billion of business tangible personal property is on Oregon's tax rolls out of a stipulated total value of $18.9 billion. (Stip. ¶¶ 30, 31, 36, J.A. at 18). The remaining 75% goes untaxed by reason of exemption, underreporting and undervaluation.[23] (Stip. ¶ 37, J.A. at 18-19). In contrast, a stipulated $24.7 billion of commercial

visory Comm. on Intergovernmental Relations, *Significant Features of Fiscal Federalism* 140 (1992) (Table 43).

[19] 2 Bureau of the Census, U.S. Dep't of Commerce, 1977 *Census of Governments* No. 1, at 8 (1978).

[20] Dick Netzer, Urban Research Center of New York University, Personal Property Taxation in the United States (1985) (Table 1).

[21] 2 Bureau of the Census, *supra* note 7, at XIX.

[22] Oregon Dep't of Revenue, *supra* note 11, at 42.

[23] A total of $14.1 billion of business personal property is untaxed. Exemptions account for $9.7 billion of the untaxed total, with $1.6 billion the result of underreporting and $2.8 billion the result of undervaluation. (Stip. ¶¶ 32-36, 43, J.A. at 18-19)

and industrial real property is on the rolls. (Stip. ¶ 46, J.A. at 20).

The factors which are causing a narrowing of the personal property tax base in Oregon and nationwide do not benefit railroads and rail cars. Such properties are typically assessed centrally[24] which system singles out railroads and other utilities for full taxation regardless of the extent of exemption of locally assessed personal property. Thus, absent the intervention of Congress under Section 11503, the nationwide trend of substantial exemption and nontaxation of personal property would not apply to rail property. *See Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981) (railroad personalty was centrally assessed and taxed even though virtually all non-railroad personal property was exempt).

Furthermore, the failure to tax most other non-railroad personalty inexorably increases the tax burden on the rail property and other property that remains subject to tax. Oregon admitted as much in a report describing the disintegration of its property tax system:

> Property tax exemptions and preferential assessments are significant because they have a direct bearing on the tax base (total taxable value in a taxing district). A broad tax base eases the burden on the individual taxpayers while a constricted base accentuates the individual taxpayer's burden.
>
> Any exemption or special assessment at less than market value merely shifts the cost of services to the properties which are valued at market. And many of these tax exempt properties also require the services of local government, such as

[24] Bureau of the Census, *supra* note 7, at XII-XIII.

police, fire, streets, etc., which are paid for by the property tax.[25]

Strong forces of political choice, practice and policy in the property tax arena are thus at work in Oregon, and the nation as a whole, tending to cause ever increasing disparities in the property taxation of railroad personalty versus other personalty. The result is correspondingly ever greater and more discriminatory tax burdens on railroads. These differential forces demonstrate the necessity of an analysis in Section 11503 cases which is specifically targeted to this problem.[26]

RPI and ASLRA respectfully submit what common experience makes plain: namely that real and personal property are different and differently taxed. Section 11503 should be construed to respect those differences.

B. THE INTENT OF CONGRESS

Legislative history makes it clear that Congress, at the time of enactment of Section 11503, was aware of and approved the universal classification of property into the separate real, tangible personal and intangible categories for tax purposes. This Court previously has found analysis of legislative history to be "inconclusive and irrelevant"[27] on a point where the statutory text of Section 11503 was plain. Nevertheless, legislative history is helpful on the distinction between real and personal property because the

[25] Oregon Dep't of Revenue, *supra* note 11, at 28.

[26] Oregon, together with its state amici demand that they be given wide freedom to fully tax railroads and railroad property notwithstanding Section 11503. However, the arguments of the states ignore their plenary power to put their own tax systems in order by imposing equal taxes on other property. The exercise of that power may not be the political path of least resistance generally favored by the states, but it certainly is an option. The availability of this political option completely defeats any argument that Section 11503 has handcuffed the states.

[27] *Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987).

statutory text itself is inconclusive on this point, while the legislative history is incisive.

The original text of the statute defines the comparison class of commercial and industrial property broadly to include "all property, real or personal."[28] This language suggests that both real and personal property are within the area of congressional concern, but does not explicitly say what comparisons between those classes should be made. The issue is, however, explicitly discussed in a committee report:

> [The bill] is not intended to interfere with the classification of property by a State for rate purposes into the traditional breakdown of real property, tangible personal property, and intangible property, provided that carrier transportation real property is taxed at no higher rate than other real property; that carrier transportation personal property is taxed at no higher rate than other personal property; and, that carrier transportation intangibles are taxed at no higher rate than other intangible property.[29]

As the committee report shows, Congress knew that the states taxed real and personal property differently but it did not consider these classifications to be discriminatory so long as railroads were equally treated within each of the classes. Thus, Congress specifically intended rail personalty to be compared to other personalty and rail realty to be compared to other realty. The courts of appeals have

[28] See Section 306(3)(c). The word "all" and the words "real or personal" were deleted from the subsequent codification into Section 11503(a)(4).

[29] Senate Committee on Commerce, *Discriminatory State Taxation of Interstate Carriers*, S. Rep. No. 1483, 90th Cong., 2d Sess. 10-11 (1968) (commenting on S. 927). *See also* Senate Committee on Commerce, *Discriminatory State Taxation of Interstate Carriers*, S. Rep. No. 630, 91st Cong., 1st Sess. 11 (1969) (commenting on S. 2289).

recognized this intent and have applied it. *Trailer Train Co. v. Leuenberger*, 885 F.2d 415 (8th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Department of Revenue, State of Fla. v. Trailer Train Co.*, 830 F.2d 1567 (11th Cir. 1987); *Burlington Northern R.R. Co. v. Bair*, 766 F.2d 1222 (8th Cir. 1985); *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981). *Cf. Clinchfield R.R. v. Lynch*, 700 F.2d 126 (4th Cir. 1983).

The courts have steadfastly refused to combine the analysis of real property and personal property regardless of which party sought to combine the two categories. *ABF Freight System, Inc. v. Tax Div. of the Ark. Public Service Comm'n*, 787 F.2d 292 (8th Cir. 1986); *Arkansas-Best Freight System, Inc. v. Lynch*, 723 F.2d 365 (4th Cir. 1983) (cases decided under Motor Carrier Act of 1980, 49 U.S.C. § 11503a, which is modeled after Section 11503.) *ABF Freight* and *Arkansas-Best* challenged the level of assessment of motor carrier property in states where business personal property was assessed at a higher ratio of value than the ratio that applied to business real property. The plaintiff motor carriers were taxed at the personal property ratios, but sought to be equalized to ratios computed on an aggregate, combined basis for all real and personal business property. The Eighth Circuit and Fourth Circuit rejected such claims, emphasizing the statutory language and legislative history of Section 11503 that made it clear that personal property and real property should be considered separately in determining whether discrimination exists.

C. PRACTICAL EFFECTS

Oregon and its amici complain bitterly of the anticipated negative impact[20] of the Ninth Circuit's ruling on their ability to collect any property tax from rail car companies or railroads. Most of the feared impact arises, however, as a consequence of Oregon's strategic decision to urge a combined comparison upon the Ninth Circuit; an invitation, frankly, that the Ninth Circuit should have declined.

This is a case involving only tangible personal property in the form of rail cars furnished by respondents to railroads. (Stip. ¶¶ 5-22, J.A. at 12-17) The only taxes at issue here are property taxes imposed by Oregon on rail cars. (J.A. at 8-9)

From the outset of this case, respondents sought to demonstrate discrimination solely by comparison to other commercial and industrial *personal* property in Oregon, which was alleged to be 80% untaxed. (J.A. at 8) Oregon ultimately stipulated that 75% of its business personalty was not taxed, but denied that this was discriminatory. Oregon's litigation strategy was to blur the massive extent of untaxed personal property by reference to the comparatively enormous business real property tax base of $24.7 billion. (Stip. ¶ 46, J.A. at 20) But the strategy went awry for Oregon when the Ninth Circuit accepted Oregon's premise *arguendo*, proceeded to make a combined real and personal comparison, but still found discrimination to exist.

[20] The impact is, in any case, exaggerated and quite minor in comparison to the overall tax base. Nationwide, railroad property accounts for but a part of the 5% of the total property tax base which is centrally assessed. For 1986 the total assessment of railroad property in Oregon is reported by the Census Bureau as $593 million. 2 Bureau of the Census, *supra* note 7, at 5 (Table 2). This is 0.71% of the total assessed value of all taxed property. Oregon's choice, for example, to leave $14.1 billion in tangible business personalty untaxed has far more fiscal significance than a complete prohibition of railroad property taxation in Oregon would have.

One of the unanticipated results was a rationale that applied to all railroad property—not just rail cars and other personalty. Oregon's current argument and expressed outrage point out the twin practical defects of the combined analysis that Oregon urges.

On the one hand such analysis tends to obscure otherwise clear discrimination against personal property.[31] This is accomplished analytically by diluting the effects of not taxing personal property by reference to real estate which is taxed. Real estate comprises approximately 62% of the tangible business wealth of the nation.[32] Thus, it will almost always overwhelm tangible personal property in any combined calculation.[33] On the other hand, if discrimination is found, the combined analysis extends the relief to all property.

It does not make sense to exempt all railroad real property simply because most business personalty is not taxed. Similarly, however, the non-taxation of personalty should not be ignored because all realty is taxed. Both results are the absurd, but all too possible, consequence of a combined analysis. If only real-to-real and personal-to-personal comparisons are employed, however, then even a complete exemption of personal property would not impair in the slightest way any State's ability to tax railroad realty.

Separate comparisons by broad categories are precise, logical, and fully consistent with the announced intent of Congress. The combined approach disregards the economic

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[31] *See Burlington Northern R.R. Co. v. Bair*, 584 F. Supp. 1229, 1237 (S.D. Iowa 1984).

[32] Allen D. Manvel, *Fiscal Facts & Figures, A Property Tax Update*, Tax Notes 609, 611 (February 3, 1992).

[33] Intangibles, though not the basis of respondents' claims here, could have the same kind of effect but in the opposite direction, since intangibles are not commonly taxed. Oregon does not tax some $65.0 billion in business and non-business intangibles (Stip. ¶41 J.A. at 19).

reality of property tax structures and leads to absurd results. Cases such as *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981), and *Burlington Northern R.R. Co. v. Bair*, 766 F.2d 1222 (8th Cir. 1985) make this plain. In those cases, only the discriminatory taxation of the railroad's personal property was enjoined. The states were left free to tax railroad real property assets on the same basis as all other commercial and industrial real property.

II. THE NINTH CIRCUIT'S FINDING OF DISCRIMINATION WAS CORRECT BUT FOR THE WRONG REASONS

Having argued that the overly-broad examination of Oregon's *entire* real and tangible personal property tax structure employed by the Ninth Circuit should be rejected by this Court, RPI and ASLRA further submit that (a) the various analytic approaches to determining "discrimination" under Section 11503 offered by Oregon, its amici and the Ninth Circuit are incorrect and (b) the analysis developed and applied by the other courts of appeals should be adopted instead.

Although the discussions and rationales of the cases have varied according to context, the substance of the Section 11503 case law in the lower courts to date has been to require railroads to be taxed only by taxes of general applicability that are also generally applied. Here, this simply means that railcars can be taxed only if the personal property tax is also applied generally to other business property.

The amicus brief of the United States puts it well: "A scheme that taxes railroad property, but exempts all or *most* non-railroad property within the State falls within the *core* of "discrimination" that Subsection (b)(4) proscribes" (U.S. Amicus Brief at 21) (emphasis added). This concept does not purport to set a final, specific and definitive boundary between discriminatory and nondiscri-

minatory property taxes, but it is fully sufficient to resolve the case here and should be adopted.

A. OREGON AND ITS AMICI EACH ARGUE FOR FUNDAMENTALLY FLAWED METHODS OF ANALYSIS FOR DETERMINING THE MEANING OF "DISCRIMINATION" IN THE CONTEXT OF SECTION 11503

Oregon and its amici offer erroneous methods of analysis for the threshold inquiry of whether "discrimination" exists under Section 11503.

1. Traditional Commerce Clause Analysis is Inapplicable

Oregon and several amici argue for application of a mode of analysis akin to the extremely deferential standard employed in discrimination inquiries under the dormant Commerce Clause. *See, e.g., Complete Auto. Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

Certainly, absent a federal statute, a state's taxing scheme is accorded vast latitude under the Commerce Clause "before it encounters constitutional restraints." *Norfolk & Western Ry. Co. v. Missouri State Tax Comm'n*, 390 U.S. 317, 326 (1968). However, where, as here, Congress does exercise its broad authority to regulate interstate commerce the freedom enjoyed by the states in the face of a constitutional challenge to state and local taxes no longer controls. *Wisconsin Dept. of Revenue v. William Wrigley, Jr. Co.*, 112 S. Ct. 2447 (1992); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 86 (1824).

Courts of appeals addressing Section 11503 have appropriately rejected the argument that the analysis of Section 11503 "should be primarily based on constitutional standards. The issue is not a constitutional one, but one of statutory interpretation and application." *Department of Revenue, State of Florida v. Trailer Train Co.*, 830 F.2d 1567, 1574 (11th Cir. 1987). Accordingly, in analyzing the

statutory provision at issue in this case "it is totally irrelevant whether [the] tax is otherwise constitutional. . . ." *Arizona v. Atchison, Topeka & Santa Fe R.R. Co.*, 656 F.2d 398, 407 (9th Cir. 1981) (*citing Southern Pacific Co. v. Arizona*, 325 U.S. 761, 769 (1945)).

Such a conclusion is reached for the simple reason that "[i]n the realm of interstate commerce, it is one thing to say that a state statute passes constitutional muster in the absence of congressional legislation, and quite another to say that the same state statute may stand in the face of a conflicting law enacted by Congress." *Id.* at 405.

Virtually the same argument as that now made by Oregon regarding the meaning to be given a federal statute's prohibition of discriminatory taxation has already been expressly rejected by this Court in *Arizona Public Service Co. v. Snead*, 441 U.S. 141 (1979). In *Snead*, the appellees urged that the applicable statutory provision prohibiting discriminatory taxation of electricity was "no more than a prohibition of a tax that is invalid under the constitutional test of the Commerce Clause." *Id.* at 149. Such an analysis was rejected by this Court, which instead looked to the broader protections expressly enacted by Congress and the specifics of the challenged tax there at issue.

2. The "Justification" Standard Advocated by Amicus United States is Similarly Infirm

The United States as Amicus argues, based on the supposed ordinary meaning of the word "discriminate",[34] that discrimination is actionable under Section 11503 "only if

[34] Amicus United States offers the definition of discriminate to be found in the Random House Dictionary. However, if the Court were to adopt instead, for instance, *Webster's New Twentieth Century Dictionary*, a fundamentally different definition would be found ("to make distinctions in treatment; show partiality (in favor of) or prejudice (against)"). *Webster's New Twentieth Century Dictionary Unabridged* 522 (2d ed. 1983). Surely the meaning of Section 11503 does not come down to a choice between lexicographers.

the State cannot justify the differences in treatment." (U.S. Amicus Brief at 8, 17.) To be sure state interests that purport to justify discrimination will always be crucial in an equal protection or similar context as this Court must strike a balance between national constitutional limitations and state prerogatives. However, as shown previously, a constitutional analysis, which would include a "justification" inquiry, was not incorporated into Section 11503.

Congress in enacting Section 11503 has struck the balance between national needs of interstate commerce and state taxing powers. *Southern Ry. Co. v. State Bd. of Equalization*, 715 F.2d 522, 529 (11th Cir. 1983), *cert. denied*, 465 U.S. 1100 (1984); *Burlington Northern R.R. Co. v. James*, 911 F.2d 1297, 1300 (8th Cir. 1990); *Union Pacific R.R. Co. v. Department of Revenue of Ore.*, 920 F.2d 581, 585-86 (9th Cir. 1990). Congress has spoken explicitly on this point. Any of the acts against railroads and rail property which are described in Section 11503(b) are declared in the words of the original act "to constitute an *unreasonable* and *unjust* discrimination against, and undue burden on, interstate commerce" (emphasis added).[35] Thus, the Court need not ask whether adverse disparate treatment of railroads for tax purposes is "unjust", i.e., unjustified. Congress itself has declared it is so.

Moreover, Section 11503 contains no explicit basis for a "justification" defense within its language and there is certainly no basis for engrafting a justification defense onto Section 11503 by implication. To the contrary, "the language of § 11503 plainly declares the congressional purpose" behind this legislation. *Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 461 (1987) ("[i]n the absence of a 'clearly expressed legislative intention to the contrary,' the language of the statute itself 'must ordinarily be regarded as conclusive'"). *See also Aloha Airlines, Inc. v. Director of Taxation of Haw.*, 464 U.S. 7, 12 (1983) ("when a federal statute unambiguously forbids the States to impose a particular kind of tax on an industry affecting interstate commerce, courts need not look beyond the plain language of the federal statute. . .").

[35] Section 306(1).

"Justification" is simply a variation of the same premise advanced by those who have unsuccessfully attempted to append an "intent" element to Section 11503 discrimination actions, a tactic this Court has resoundingly rejected. *Burlington Northern R.R. Co. v. Oklahoma Tax Comm'n*, 481 U.S. 454, 463, (1987) ("Subsection (b) speaks only in terms of 'acts' which 'unreasonably burden or discriminate against interstate commerce'; nowhere does it refer to the intent of the actor").[36]

The lower courts have taken a narrow view of possible justifications in Section 11503 cases. Although no court has yet found an otherwise discriminatory tax "justified" under Section 11503, courts have recognized the theoretical possibility that differences relating to the intrinsic character of railroads might justify their different treatment. *See, e.g., Kansas City Southern Ry. Co. v. McNamara*, 817 F.2d 368, 376 (5th Cir. 1987) which states:

> It may be that in an appropriate case we would allow the state to save a facially discriminatory tax by showing that it is *necessary* to "compensate" for some state or local tax—a tax applicable to "other commercial and industrial" taxpayers—that for some reason *cannot* be levied against the railroads.

[36] *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803 (1989) cited by Oregon and the United States is not to the contrary. *Davis* involved an intergovernmental tax immunity statute which was construed to codify existing constitutional standards. *Id.* at 813. Thus, *Davis* actually applied no more than minimum constitutional standards.

See also Burlington Northern R.R. v. City of Superior, Wis., 932 F.2d 1185, 1188 (7th Cir. 1991). Any such justification however, would relate only to peculiar requirements for special treatment of railroads rather than rationales for special benefits to other taxpayers.

Here, any such discussion must be, as it was in *Kansas City Southern*, purely hypothetical because no justification has ever been offered. Certainly, the United States in advancing the justification concept has offered no theoretical, much less record-based, rationale for the massive disparity in Oregon's personal property tax practices. Instead, the United States merely invites this Court to give Oregon a second opportunity to make its case by remanding it for unspecified proceedings. This suggestion ignores the fact that the parties submitted this case on the basis of a comprehensive stipulated record (J.A. at 11-20) which makes no effort to establish justification. This Court is simply not the place to initiate previously unasserted defenses.[37]

Even if a "justification" inquiry were appropriate, Oregon cannot prevail, because any "justification" that could be offered by Oregon's taxing authorities would simply be rationalizations for the political choices being made by that state. The Oregon situation exemplifies the propensity to target rail property as "easy prey" which this Court has identified as the primary vice to be corrected by Section 11503.[38] There is no legitimate justification that requires

[37] The position of the United States in this regard is ironic. The United States originally urged that *certiorari* be granted for this Court to consider and announce a single, unified standard of discrimination in Section 11503 cases so that perceived incipient confusion and inconsistency in the lower courts could be avoided. The call for an *ad hoc* justification analysis in the district courts is certainly at odds with the original views of the United States.

[38] *Western Air Lines, Inc. v. Board of Equalization*, 480 U.S. 123, 131 (1987) (quoting S. Rep. No. 630, 91st Cong., 1st Sess. 3 (1969)).

or mandates that rail car property be fully valued, assessed, and taxed while the vast majority of a State's personal property goes untaxed. Any such justification would simply serve as a pretext for discrimination.

Ultimately, the question presented to this Court by the decision of the Ninth Circuit is not why massively disparate treatment of rail cars has arisen in Oregon. Neither Oregon's intention nor any *post hoc* justifications can be considered relevant. The only proper issue is whether the extent of disparate treatment shown is enough to establish discrimination.

B. DISCRIMINATION AGAINST RAIL CAR PERSONAL PROPERTY IS SHOWN, AT THE LEAST, WHEN MOST OTHER BUSINESS PERSONAL PROPERTY WITHIN A STATE GOES UNTAXED

Much confusion is created in this case from a single, gratuitous overstatement in the Ninth Circuit's opinion concerning the language of Section 11503(b)(4). The Ninth Circuit asserted: "The most natural reading of this language is that the statute is violated by *any* exemption given to other taxpayers but not to railroads." (Pet. App. at 16) (emphasis in original).

Of course, this is not what the statute explicitly says. It is an equally natural—and, RPI and ASLRA would assert, far more realistic—reading of the statute that some level and types of exemption are allowed before discriminatory treatment "results" under Section 11503(b)(4). Common sense, experience, and a desire to avoid absurd results argue persuasively that some exemptions may be granted by a state to a limited portion of its personal property tax base without the necessary conclusion that rail cars are thereby being discriminated against. It is equally clear, however, that discrimination "results" from the full taxation of rail cars if a sufficient quantity of other business personal property is not, in fact, likewise taxed.

As the lone support for its reading of Section 11503(b)(4), the Ninth Circuit's opinion cited to the decision in *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981), and asserted that the Eighth Circuit's decision there held that "any exemption not also available to railroads violates the statute". (Pet. App. at 17). But such was not the holding in *Ogilvie*, which involved the virtually complete exemption of all other business personalty and relief only for railroad personalty. Nor has any other court ever claimed it was, or gone so far as the Ninth Circuit. Moreover, no such quantum jump was, or is now, required in the dispute before this Court because an extremely large percentage of non-railroad personal property is not taxed here.[39]

Issues of discrimination are highly dependent on context and federal courts have traditionally analyzed Section 11053 discrimination issues according to the precise statutory and factual settings in which each case arises. "[I]n the manner of the common law, we must work out the meaning of 49 U.S.C. § 11503 gradually in relation to specific disputes." *Kansas City Southern Ry. Co. v. McNamara*, 817 F.2d 368, 379 (5th Cir. 1987).

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[39] If this Court were to adopt a combined real and personal approach, then the resolution of a number of complex and difficult issues becomes necessary. For example, the consideration of intangibles, which are untaxed in Oregon to the extent of $65 billion, could mean that no rail property could be taxed in Oregon. *Supra* note 33. Standing timber, which is real property exempt from property tax, and subject to a lower severance tax instead, must be considered, and should be counted as untaxed. The question of a minimum threshold for discrimination, which otherwise need not be reached, becomes a vital issue. Such a threshold, if one exists, must be lower in a combined context if the effects of non-taxation of personalty are not to be lost in the mass of real property. To RPI and ASLRA, these considerations argue forcefully for the relative simplicity of a personal property only analysis. But, if that view is not accepted, the Ninth Circuit's finding of discrimination on combined real and personal property basis should be affirmed.

In the process of resolving the myriad Section 11503(b)(4) disputes which have come before them, the courts have not attempted to set forth a single, universal test of discrimination. They have, however, found with remarkable unanimity[40] that discrimination has been shown in certain circumstances that have repetitively arisen, including the precise situation stipulated to exist in Oregon. Two concepts emerge from the consistent results in the lower courts.

First, railroads and rail property may be taxed only by taxes of general applicability. Taxes imposed only on railroads, or a narrow class which includes railroads, have been consistently found discriminatory. *Burlington Northern R.R. Co. v. City of Superior, Wis.*, 932 F.2d 1185 (7th Cir. 1991); *Trailer Train Co. v. State Tax Comm'n*, 929 F.2d 1300 (8th Cir.), *cert. denied*, 112 S. Ct. 169 (1991); *Kansas City Southern Ry. Co. v. McNamara*, 817 F.2d 368 (5th Cir. 1987); *Alabama Great Southern v. Eagerton*, 663 F.2d 1036 (11th Cir. 1981).

Second, a tax of general applicability must also be generally applied.[41] *See, e.g., Trailer Train Co. v. Leuenberger*,

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[40] Literally dozens of judges over the past 15 years within the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits have reached strikingly similar conclusions as to the analysis to be employed in Section 11503 litigation in various kinds of cases. Arguments of the tenor employed by Oregon here have been consistently rejected as antithetical to the remedial purposes of Section 11503. As the Fifth Circuit expressed the point, "[t]he shadows have lengthened across their arguments, as one-by-one every Court of Appeals that has considered the issue has sided with the railroads' position. Although these decisions do not bind us, we do not lightly disregard such unanimity . . . ." *Kansas City Southern Ry. Co. v. McNamara*, 817 F.2d 368, 374 (5th Cir.1987).

[41] *Cf.* Section 306(1)(c) of the original Act which requires rail property to be taxed at a rate no higher than the "generally applicable" commercial and industrial rate. The "generally applicable" rate has been found to be the rate applicable to the majority of business property.

885 F.2d 415 (8th Cir. 1988), *cert. denied*, 490 U.S. 1066 (1989); *Department of Revenue, State of Florida v. Trailer Train Co.*, 830 F.2d 1567 (11th Cir. 1987); *Burlington Northern R.R. Co. v. Bair*, 766 F.2d 1222 (8th Cir. 1985); *Ogilvie v. State Bd. of Equalization*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981).[42]

The rationale of these cases is consistent with this Court's decisions. "The only simple way to prevent tax discrimination against the railroads is to tie their fate to the fate of a large and local group of taxpayers. A large group of local taxpayers will have the political and economic power to protect itself against an unfair distribution of the tax burden." *Kansas City Southern Ry. Co. v. McNamara*, 817 F.2d 368, 375 (5th Cir. 1987). *Compare Western Air Lines, Inc. v. Board of Equalization*, 480 U.S. 123, 131-32 (1987). As this Court has observed: "[w]hen the State imposes a generally applicable tax, there is little cause for concern. We need not fear that a government will destroy a selected group of taxpayers by burdensome

Trailer Train Co. v. State Bd. of Equalization, 697 F.2d 860 (9th Cir.), *cert. denied*, 464 U.S. 846 (1983).

[42] All of these cases were concerned only with claims of discriminatory exemption practices. The claims of respondents here are slightly broader because, in addition to exemption, underreporting and undervaluation of tangible personal property are each separately stipulated to have resulted in non-taxation of substantial portions of the personal property tax base. This Court need not decide here whether underreporting and undervaluation may properly be considered because the extent of exemptions alone is plainly more than sufficient to warrant relief and the parties are not arguing the issue. Nevertheless, RPI and ASLRA urge that this Court not limit the possible basis of claims to exemptions only. Section 11503(b)(4) is concerned, in the words of the original Act, at Section 306(1)(d), with discriminatory "results". Exemptions are just one of the ways that non-taxation of other property may occur. Undervaluation and underreporting have exactly the same impact and should be considered indistinguishable from exemption in determining whether a tax "results in discriminatory treatment". For comparison purposes the important issue is whether the other property is taxed or not taxed. The reason why it is not taxed is completely irrelevant.

taxation if it must impose the same burden on the rest of its constituency." *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585 (1983). *See also Railway Express Agency, Inc. v. New York*, 336 U.S. 106, 112-13 (1949) (Jackson, J. concurring).

The ultimate line at which taxes are found to be discriminatory because not generally applicable or generally applied has not been precisely drawn by the case law because the facts presented by the cases decided to date have involved only the massive extent of exemption of the kind presented here.

All of the decided cases on exemptions, including this one have involved claims well within the "core" of discrimination as defined in the Brief of the United States, that is, when "most" other personal property is not taxed. Thus, the boundary of discrimination at the periphery has remained undefined in all previous cases. True, the Ninth Circuit ventured to the edge in its opinion, but quite unnecessarily so because Oregon has admitted by stipulation that 67% of all commercial and industrial tangible personal property in Oregon is exempt. (Stip. ¶¶ 30-36, J.A. at 18.) The Oregon personal property tax is not generally applicable under any possible view of that concept.

To be sure, rail car owners find themselves in the company of the owners of 25% of the personal property that is also taxed by Oregon's taxing authorities. But "[d]iscrimination against a taxpayer protected by § [11503(b)] cannot be justified because others are also victims of discrimination." *Trailer Train Co. v. Leuenberger*, 885 F.2d 415, 418 (8th Cir. 1988). *See also Ogilvie*, 492 F. Supp. 446, 455 (N.D. 1980), *aff'd*, 657 F.2d 204 (8th Cir.), *cert. denied*, 454 U.S. 1086 (1981) ("discrimination against one business or person cannot be justified merely because others are also the victims of discrimination").

Where, as here, the pattern and practice of a state is to allow most personal property to go untaxed, while rail

cars remain a disfavored minority that is fully taxed, the system is discriminatory on its face. Congress wrote Section 11503(b)(4) broadly and, contrary to various arguments of Oregon's and its Amici, no advisory opinion attempting to offer some "definitive" definition of "discrimination" is required to resolve this case. Rather, the facts warrant the following holding consistent with the uniform case law already developed by the courts below: The full taxation of rail cars by a state is discriminatory, within the meaning of Section 11503, at least when most other commercial and industrial tangible personal property in that state goes untaxed. No more is presented here and no more needs to be decided.

CONCLUSION

RPI and ASLRA urge this Court to affirm the result of the court of appeals by holding that the proper comparison class with respect to property taxation of rail cars is other business tangible personal property and that discrimination is shown, at the least, when rail cars are fully taxed but most other business tangible personal property within a state is not taxed.

Respectfully submitted,

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APPENDIX

APPENDIX A

MEMBERS OF THE RAILWAY PROGRESS INSTITUTE

ABB Traction Inc.
ABC Rail Corporation
ACF Industries, Inc.
AEG Transportation Systems, Inc.
Allied International Corp.
AMCI
AMSTED Industries Incorporated
Atchison Casting Corp.
Bombardier Corporation
Raul V. Bravo & Associates
Brenco, Inc.
Buckeye Steel Castings Company
Buffalo Brake Beam Company
CANAC International Inc.
Chicago Freight Car Leasing Company
Cleveland Track Material, Inc.
Difco, Inc.
Digital Concepts, Inc.
Electro-Motive Division, General Motors Corporation
Ellcon-National, Inc.
Fairmont Tamper, a Harsco Company
FM Industries, Inc.
Fruit Growers Express Company
GEC Alsthom Transportation, Inc.
General American Transportation Corporation
GE Capital Railcar Services Corporation
GE Transportation Systems
General Railway Signal Corp.
GLNX Corporation
The Goodyear Tire & Rubber Company Engineered Products Division
The Greenbrier Companies
The Gregg Company, Ltd.
Hackney-Wellington & Associates, Inc.
Harmon Industries, Inc.

Henkels & McCoy, Inc.
IEC-Holden, Inc.
IIT Research Institute (IITRI)
Johnstown America Corporation, Freight Car Division
K-III Directory Corporation
Keystone Railway Equipment Co.
Kraiburg Corporation of America
Lincoln Industries Corporation
LTK Engineering Services
McConway & Torley Corporation
Mercer Management Consulting, Inc.
Henry Miller Spring & Manufacturing Company
Miner Enterprises, Inc.
Morrison Knudsen Corp.
Morton Manufacturing Company
NACO, Incorporated National Castings Division
New York Air Brake, A Unit of Knorr Brake
Nordco
The Okonite Company
ORGO-Thermit, Inc.
Pandrol North America Pandrol Jackson, Inc.
Pennsy Corporation
Pennsylvania Steel Technologies, Inc., A Subsidiary of Bethlehem Steel Corporation
Pittsburgh Spring, Inc.
Plasser American Corporation
PLM International, Inc.
The Polymer Corporation
Potomac Railway Supply Company
Progressive Railroading
Pulse Electronics, Inc.
Rail Bearing Service, Inc.
Rail Transportation Systems, Inc.
Railway Age
RAILX, Division of Southern Machine & Tool Company
Riedel OMNI Rubber Products,Inc.
Rockwell International

Roller Bearing Industries, Inc.
Safetran Systems Corporation
Schaefer Equipment, Inc.
Tom Schofield & Associates, Inc.
Norman W. Seip & Associates
SERRMI, Inc.
Servo Corporation of America
Standard Car Truck Company
Standard Steel
A. Stucki Company
D.A. Summers & Associates, Inc.
Temco Corporation
Thrall Car Manufacturing Company
The Timken Company
Trackmobile, Inc.
Transamerica Leasing Inc.
Transco Railway Products, Inc.
TRIAX
Trinity Industries
TTX Company
Union Switch & Signal Inc.
Union Tank Car Company
Unit Rail Anchor Company
United Industries Corporation
Unity Railway Supply Co., Inc.
Vapor-Mark IV Transportation Products Group
V-H Corporation
Vulcan Materials Company
Western-Cullen-Hayes, Inc.
Westinghouse Air Brake Company/Cardwell-Westinghouse
YSD Industries, Inc.

APPENDIX B

THE AMERICAN SHORT LINE RAILROAD ASSOCIATION

RAIL MEMBERS

Abbeville & Grimes Railway Company
Aberdeen, Carolina & Western Railway Co.
Aberdeen & Rockfish Railroad Company
Acadiana Railway Company
Adrian & Blissfield Rail Road Company
Akron & Barberton Belt Railroad Company
Alabama Railroad
Alabama & Florida Railway Co.
Alexander Railroad Company
Algers, Winslow & Western Railway Company
Aliquippa and Southern Railroad Company
Allegheny Railroad Company
Amador Central Railroad
Angelina & Neches River Railroad Company
Ann Arbor Railroad
Apache Railway Company
Apalachicola Northern Railroad Company
Appanoose County Community Railroad
Arcade & Attica Railroad Corporation
Arizona & California Railroad
Arizona Central Rail Road
Arizona Eastern Railway Company
Arkansas, Louisiana & Mississippi Railway Co.
Arkansas & Missouri Railroad Company
Arkansas Midland Railroad Company, Inc.
Aroostook Valley Railroad Company
Ashland Railway Company
Ashley, Drew & Northern Railway Company
AT&L Railroad Company
Atlanta & St. Andrews Bay Railway Company
Atlantic and Gulf Railroad Company
Atlantic and Western Railway, L.P.

Austin & Northwestern Railroad Company

Baltimore & Annapolis Railroad Company
Bath & Hammondsport Railway Company
Bauxite & Northern Railway Company
Bay Colony Railroad Corporation
Beech Mountain Railroad Company
Belfast & Moosehead Lake Railroad Company
The Belt Parkway Co. of Chicago
Birmingham Southern Railroad Company
Black River & Western Corporation
Bloomer Line, The
Blue Mountain & Reading Railroad Company
Border Pacific Railroad Company
Brandywine Valley Railroad Company
Bristol Industrial Terminal Railway, Inc.
Brownsville & Rio Grande International Railroad
Buckingham Branch Railroad Company
Buffalo & Pittsburgh Railroad, Inc.
Buffalo Southern Railroad
Burlington Junction Railway

C & S Railroad Corporation
Cairo Terminal Railroad
California Western Railroad
Cambria and Indiana Railroad Company
Caney Fork & Western Railroad
Canton Railroad Company
Carolina Coastal Railway, Inc.
Carolina & Northwestern Railroad
Carolina Piedmont Division/SC Central Railroad
Carolina Rail Services Company
Cedar Rapids & Iowa City Railway Company
Cedar River Railroad Company
Central California Traction Co.
Central Indiana & Western Railroad
Central Kansas Railway
Central Michigan Railway Company

Central Montana Rail
Central Railroad Company of Indianapolis, Inc.
Central of Tennessee Railway & Navigation Co.
Central Vermont Railway, Inc.
Champagne Railroad, Inc.
Chaparral Railroad Company, Inc.
Chattahoochee Industrial Railroad
Cheney Railroad Company
Chesapeake & Albemarle Railroad
Chestnut Ridge Railway Company
Chicago, Central & Pacific Railroad Company
Chicago and Illinois Midland Railway Co.
Chicago Rail Link
Chicago Short Line Railway Company
Chicago, SouthShore & South Bend Railway
City of Prineville Railway
Claremont-Concord Railroad Corporation
Clarendon & Pittsford Railroad Company
Colonel's Island Railroad
Colorado & Wyoming Railway Company
Columbia & Cowlitz Railway Company
Columbia Terminal
Columbus & Greenville Railway Company
Commonwealth Railway Incorporated
Conemaugh & Black Lick Railroad Company
Connecticut Central Railroad
Copper Basin Railway, Inc.
Crab Orchard & Egyptian Railroad
Cumbres & Toltec Scenic Railroad
Cuyahoga Valley Railway Company

Dakota, Minnesota & Eastern Railroad
Dakota, Missouri Valley & Western Railroad, Inc.
Dakota Rail, Inc.
Dallas, Garland & Northeastern Railroad
Dansville & Mount Morris Railroad Company
Dardanelle & Russellville Railroad

Delaware Coast Line Railroad Company
Delray Connecting Railroad Company
Delta Valley & Southern Railway Company
Depew, Lancaster & Western Railroad Company, Inc.
DeQueen & Eastern Railroad Company
Duluth & Northeastern Railroad Company
Dunn-Erwin Railway Corporation

East Camden & Highland Railroad Company
East Cooper and Berkeley Railroad
East Erie Commercial Railroad
East Jersey Railroad & Terminal Company
East Portland Traction Company
East Tennessee Railway, L.P.
Eastern Alabama Railway
Eastern Shore Railroad, Inc.
Escanaba & Lake Superior Railroad
Everett Railroad Company, The

Farmrail Corporation
Florida Central Railroad Company
Florida Midland Railroad Co., Inc.
Florida Northern Railroad Company
Florida West Coast Railroad Company
Floydada & Plainview Railroad
Fordyce & Princeton Railroad
Fort Smith Railroad Company
Fort Worth & Western Railroad
Fox River Valley Railroad Corporation

Galveston Railroad, L.P.
Garden City Western Railway Company
Gateway Western Railway
Genesee & Wyoming Railroad Company
Georgetown Railroad Company
Georgia & Alabama Division/SC Central Railroad
Georgia Central Railway, L.P.

Georgia Great Southern Division
Georgia Northeastern Railroad Co., Inc.
Georgia Southwestern Division/SC Central Railroad
Gettysburg Railroad Company
Gloster Southern Railroad Company
Golden Triangle Railroad
Grafton & Upton Railroad Company
Grand Canyon Railway, Inc.
Grainbelt Corporation
Great River Railroad
Great Walton Railroad Company, Inc.
Great Western Railway Company
Green Bay & Western Railroad Company
Green Mountain Railroad Company
Greenville & Northern Railway Company
Gulf, Colorado & San Saba Railway

H & S Railroad Company
Hampton & Branchville Railroad Company
Harbor Belt Line Railroad
Hartwell Railroad Company
Hollis & Eastern Railroad Company
Housatonic Railroad Company
Houston Belt & Terminal Railway Company
Huntsville Madison County RR Authority, The
Huron and Eastern Railway Company, Inc.
Hutchinson & Northern Railway Company

Indian Creek Railroad Company
Indiana Harbor Belt Railroad Company
Indiana Hi-Rail Corporation
Indiana Northeastern Railroad Company, Inc.
Indiana & Ohio Central Railroad, Inc.
Indiana & Ohio Eastern Railroad, Inc.
Indiana and Ohio Railroad Company
Indiana & Ohio Railway Company
Indiana Southern Railroad, Inc.

Indiana Rail Road Company, The
Iowa Interstate Railroad Ltd.
Iowa Traction Railroad Company
ISS Rail, Inc.

J K Line, Inc.
Jaxport Terminal Railway Company
Jefferson Warrior Railroad Company
Joppa & Eastern Railroad Company

Kalamazoo, Lake Shore & Chicago Railway
Kankakee, Beaverville & Southern Railroad
Kansas City Public Service Freight Operation
Kansas Southwestern Railway
Kentucky & Tennessee Railway
Keokuk Junction Railway
Kiamichi Railroad Company, Inc.
Knox & Kane Railroad Company
KWT Railway, Inc.
Kyle Railroad Company

Lackawanna Valley Railroad
Lahaina Kaanapali & Pacific Rail Road
Lake State Railway Company
Lake Superior & Ishpeming Railroad Company
Lake Terminal Railroad Company, The
Lamoille Valley Railroad Company, Inc.
Lancaster & Chester Railway Company
Landisville Railroad, Inc.
Laurinburg & Southern Railroad
Lewis & Clark Railway
Little Kanawha River Rail, Inc.
Little Rock Port Railroad
Little Rock & Western Railway, L.P.
Livonia, Avon & Lakeville Railroad Corporation
Logansport & Eel River Short-Line Co., Inc.
Long Island Rail Road
Longview, Portland & Northern Railway Company

Louisiana & Delta Railroad Co., Inc.
Louisiana & North West Railroad Company
Louisville, New Albany & Corydon Railroad Company

Madison Railroad (City of Madison Port Auth.)
Mahoning Valley Railway Company
Maine Coast Railroad
Manufacturers Railway Company
Maryland Midland Railway Company
Maryland & Pennsylvania Railroad
Massachusetts Central Railroad Corporation
Massena Terminal Railroad Company, The
McCloud Railway Company
Meridian & Bigbee Railroad Company
M. G. Rail, Inc.
Michigan Shore Railroad, Inc.
Michigan Southern Railroad
Mid Atlantic Railroad Company, Inc.
Middletown & Hummelstown Railroad Company
Middletown & New Jersey Ry. Co., Inc.
Midland Terminal Company
Mid-Michigan Railroad
Midwest Coal Handling Co., Inc.
Minnesota Commercial Railroad Company
Minnesota, Dakota & Western Railway Company
Mississippi Central Railroad
Mississippi Delta Railroad
Mississippi Export Railroad Company
Mississippi & Skuna Valley Railroad Company
Mississippian Railway Cooperative, Inc.
Missouri Southeastern Railroad
MNVA Railroad, Inc.
Modesto & Empire Traction Company
Mohawk, Adirondack & Northern Railroad Corporation
Monongahela Connecting Railroad Company
Montana Rail Link, Inc.
Montana Western Railway Company

Morristown & Erie Railway, Inc.
Moscow, Camden & San Augustine Railroad

Napa Valley Railroad Company
Nash County Railroad Corporation
New Georgia Railroad
New Hampshire North Coast Corporation
New Hampshire and Vermont Railway
New Orleans Lower Coast Railroad
New York Cross Harbor Railroad Terminal Co.
New York & Greenwood Lake Railway
New York & Lake Erie Railroad Company
New York, Susquehanna & Western Railroad
Newburgh & South Shore Railroad Company
Nimishillen & Tuscarawas Railway Company
Nittany & Bald Eagle Railroad Company
Norfolk and Portsmouth Belt Line
North Carolina & Virginia Railroad Co., Inc.
North Coast Railroad
North Shore Railroad Company
Northeast Kansas & Missouri Railroad
Northern Nevada Railroad Corporation
Northwestern Oklahoma Railroad Company

Octoraro Railway, Inc.
Ogeechee Railway Company
Ohio Central Railroad, Inc.
Ohio Southern Railroad, Inc.
Oil Creek & Titusville Lines
Old Augusta Railroad Co.
Omaha, Lincoln and Beatrice Railway Company
Ontario Central Railroad Corporation
Ontario Midland Railroad Corporation
Oregon, Pacific & Eastern Railroad Company
Otter Tail Valley Railroad
Ouachita Railroad Company

Paducah and Louisville Railway, Inc.
Parr Terminal Railroad
Patapsco & Back Rivers Railroad
Pearl River Valley Railroad
Pecos Valley Southern Railway Company
Pee Dee River Railway
Pend Oreille Valley Railroad
Philadelphia, Bethlehem and New England Railroad
Pickens Railroad Company
Pigeon River Railroad Company
Pioneer Valley Railroad Company, Inc.
Pittsburg and Shawmut Railroad Company
Pittsburgh, Allegheny & McKees Rocks Railroad
Pittsburgh and Ohio Valley Railroad Company
Point Comfort & Northern Railway Company
Port Bienville Railroad
Port Jersey Railroad Company
Port Royal Railroad
Port Terminal RR of South Carolina
Port of Tillamook Bay Railroad
Port Utilities Commission of Charleston, The
Prescott & Northwestern Railroad Company
Providence and Worcester Railroad Company

Quincy Bay Terminal Company

Railroad Switching Service of Missouri, Inc.
Rarus Railway, Inc.
Red River Valley & Western Railroad Co.
Red Springs and Northern Railroad Company
River Terminal Railway Company
R. J. Corman Railroad Company/Cleveland Line
RJ Corman Railroad Company/The Memphis Line
R. J. Corman Railroad Corporation
Rochester & Southern Railroad Co.
Rockdale, Sandow & Southern Railroad Company

Sabine River & Northern Railroad Company

Sacramento Southern Railroad, California State Railroad Museum
Salt Branch Historic Railroad, Inc.
Salt Lake, Garfield & Western Railway
Sand Springs Railway Company
Sandersville Railroad Company
San Diego & Imperial Valley Railroad Company
San Joaquin Valley Railroad Co., Inc.
San Luis Central Railroad
San Manuel Arizona Railroad Company
Santa Cruz, Big Trees & Pacific Railway Co.
Santa Fe Southern Railway, Inc.
Santa Maria Valley Railroad Company
Seagraves, Whiteface & Lubbock Railroad
Seminole Gulf Railway L.P.
Shamokin Valley Railroad Company
Sierra Railroad Company
South Branch Valley Railroad
South Buffalo Railway Company
South Carolina Central Railroad Co., Inc.
South Central Florida Railroad
South Central Tennessee Railroad
South Orient Railroad Company, Ltd.
Southern Railroad Company of New Jersey
Southern San Luis Valley Railroad Company
St. Lawrence & Atlantic Railroad Company
St. Lawrence & Raquette River Railroad
St. Maries River Railroad Company
St. Marys Railroad Company
Steelton & Highspire Railroad Company
Stewartstown Railroad Company
Stockton Terminal & Eastern Railroad
Stourbridge Railroad Company

Tacoma Municipal Belt Line Railway
Tennessee Southern Railroad Company, Inc.
Tennken Railroad Company

Terminal Railway - Alabama State Docks
Texas Central Railroad Company
Texas, Gonzales & Northern Railway Company
Texas Mexican Railway Company, The
Texas & New Mexico Railroad
Texas North Western Railway Company
Texas Northeastern Railroad
Texas & Northern Railway Company
Texas, Oklahoma and Eastern Railroad Company
Texas South-Eastern Railroad Company
Thermal Belt Railway
Tomahawk Railway, L.P.
Tradewater Railway Company
Transkentucky Transportation Railroad, Inc.
Trona Railway Company
Tulsa-Sapulpa Union Railway Company
Turtle Creek Industrial Railroad, Inc.
Tuscola & Saginaw Bay Railway
Twin Cities & Western Railroad Company

Union Railroad Company
Upper Merion & Plymouth Railroad Company
Utah Central Railway
Utah Railway Company

Valdosta Railway, L.P.
Vandelia Railroad Company
Ventura County Railway Company
Vermont Railway, Inc.
Virginia Southern Division/North Carolina & Virginia RR

Wabash & Grand River Railway
Walking Horse & Eastern Railroad
Warren & Saline River Railroad
Washington Central Railroad Co., Inc.
Washington County Railroad Corporation
WCTU Railway Company

West Jersey Railroad Company
West Tennessee Railroad
Western Rail Road Company
Wheeling and Lake Erie Railway Company
Wichita, Tillman & Jackson Railway
Willamette & Pacific Railroad, Inc.
Willamette Valley Railway Co.
Wilmington Terminal Railroad, L.P.
Wilmington & Western Railway Company
Winchester & Western Railroad Company
Wiregrass Central Railroad
Wisconsin & Calumet Railroad Company
Wisconsin Central Ltd.
Wisconsin & Michigan Railway Company
Wisconsin & Southern Railroad Company

Yadkin Valley Railroad
Yorkrail, Inc.
Youngstown & Austintown Railroad
Yreka Western Railroad Company

OTHER MEMBERS

Atlantic Track & Turnout
Automated Monitoring & Control International, Inc.
Automated Transportation Support Systems
Azcon Corporation

Bankers Insurance Company
R. L. Banks & Associates
Berwick Freight Car Company
Birmingham Rail & Locomotive Company, Inc.
Boatright Enterprises, Inc.
Brandt Construction Company/Track Division
BRENCO, Inc.
W. M. Brode Company
Brown Rail Road Equipment, Inc.
Burke-Parsons-Bowlby Corporation, The

Burlington Northern Rail Services, Inc.

C & H Chemical, Inc.
California Union Insurance Company
Canac International, Inc.
Canton Agency, Inc.
Carter & Burgess, Inc.
Caterpillar, Inc.
CCTC International
Century Precast
Chemetron Railway Products/True Temper
Chicago Freight Car Leasing Company
Chromium Corporation
C. K. Industries, Inc.
Clark Industries, Inc.
Commercial Metals Railroad Salvage Company
Conley Frog and Switch Company
Continental Excess & Select
Cooper Enterprises, Inc.
Corbin Railway Service Company

Daniel, Mann, Johnson & Mendenhall
Dataquest, Inc.
Diesel Supply Company, Inc.
DIFCO, Inc.
Diversified Tracks, Inc.
DJR, Inc./Railroad Signal Contractors
Dupont Company
Durox Company
Thomas K. Dyer, Inc.

Eastern Electric Apparatus Repair Company, Inc.
Economy Electric Company
Eide Helmeke & Company
ENSCO, Inc.
Epton Industries, Inc.
Esco Equipment Service Company

Fairmont-Tamper
Fastrac Railroad Construction
First National Bank of Boston
FM Industries, Inc.
L. B. Foster Company
Frederick Agency, The
Freight Services, Inc.
FSA Rebuilding

GATX Capital Corporation
G. E. CAPITAL Railcar Services, Inc.
G. E./Service & Apparatus Division
G. E./Transportation Systems Business Operation
General Motors Locomotive Group
General Railway Signal Corporation
GNB Incorporated/TPS Company, Inc.
Goderich-Exeter Railway Co.
Gohmann and Associates, Inc.
Goodyear Tire & Rubber Company
Gordon, Bua & Read, Inc.
Greater Shenandoah Development Company
Greenbrier Companies, The

Harmon Industries
Frederic R. Harris, Inc.
Haynes Corporation
Helm Financial Corporation
Herzog Contracting Corporation
Hi-Rail Corporation
Donald J. Hogan & Company
Hoke & Associates, Inc.
Holland Company
Homestead Insurance Co.
Hulcher Services

IIT Research Institute
Illinois Auto Electric Company

Independent Equipment Company
Industrial Track Supply Company

Jacobson, Goldfarb & Scott, Inc.
JMA Railroad Supply Company
T. C. Johnson Company
David J. Joseph Company

Kerr-McGee Chemical Corporation
Keystone Railway Equipment Company
Klutts Equipment, Inc.
Koppers Industries, Inc.

L & M Radiator, Inc.
L & W Industries, Incorporated
Lakeside Fusee Corporation
Lewis Rail Service Company
Lincoln Industries, Inc.
Lincoln Insurance
Logan Corporation

Macdonald & Company
McConway & Torley Corporation
H. P. McGinley, Inc.
Merchants Despatch Transportation Corporation
Mid America Railway Supply, Inc.
Midwest Steel
Modern Track Machinery, Inc.
Morrison-Knudsen Corporation
Morrison Metalweld Process/DTS Corporation
Motor Coils Manufacturing Company
Multi-Service Supply Division

National Electric Gate Company
National Railway Equipment Company
NationsBank of Tennessee
New York Air Brake Company

Nolan Company, The
Nordco, Inc.
NorRail, Inc.
North American Railway Services, Inc.
Northbrook Rail Corporation

Osmose Railroad Division
Orgo-Thermit, Inc.

Pacific Mutual Services
Pacific Rail Leasing Corporation
Palmer & Cay/Carswell, Inc.
Pandrol Jackson, Inc.
Parsons Brinckerhoff
Pasquale and Bowers, C.P.A.'s
Patco Industries, Inc.
Peaker Services, Inc.
Plasser American Corporation
Pohl Corporation
Portec, Inc.
Power Parts Company
Power Parts Sign Company
Professional Railroad Placement Services, Inc.
Professional Railroad Services Company
Provident Life and Accident Insurance Co.
Pulse Electronics, Inc.

Quality Bearing Service, Inc.
Quality Transportation Service
Queen City, Incorporated

Racine Railroad Products, Inc.
Rail Link, Inc.
Rail Systems, Inc.
Railcar Management, Inc.
Railcar Specialties, Inc.
RAILINC Corporation

Railroad Friction Products Corporation
Railroad Service, Inc.
RailSafe, Inc.
RailTex, Inc.
Railway Claim Services, Inc.
Railway Educational Bureau, The
Railway & Industrial Services, Inc.
Railway Services, Inc.
RailX
RCC Materials & Equipment Corporation
Recoveries Unlimited, Inc.
Recovery and Reclamation, Inc.
Red Rock Consulting, Inc.
Relco Locomotives, Inc.
Reliance Insurance Company
Republic Locomotive Works
Riedel Omni Products, Inc.
Rollins Hudig Hall

S & C Distribution Company
Safetran Systems Corporation
Safety Kleen/Breslube U.S.A.
SAFT Nife, Inc.
Sardello, Inc.
Seaman Timber Company, Inc.
Seneca Railroad & Mining, Inc.
Shortline Railroad Insurance Brokers
Silcott Railway Equipment
Stanley H. Smith & Company, Inc.
Smyth, Sanford & Gerard, Inc.
Southern Indiana Wood Preserving Co., Inc.
Sperry Rail Service
Spike Industries
SSI Mobley Company, Inc.
Standard Car Truck Company
Station List Publishing Company
Steel Processing Services, Inc.

R.W. Summers Railroad Contractor, Inc.
Superior Tie & Timber
B. Sykes Limited

Temco, Inc./Railway Products Division
Theimeg, Inc.
Thompson Industries, Inc.
Thrall Car Manufacturing Company
Touchstone, Inc.
Touchton Air Brake Company, Inc.
Tracks Unlimited, Inc.
Train Track Computer Systems, Inc.
Transmetrics, Inc.
Transportation Marketing Services
Transportation Training Services
Triad Contractors, Inc.
Triangle Engineered Products, Inc.
Trinity Industries, Inc. - Parts Division

Union Switch & Signal, Inc.
Unit Rail Anchor Company
United Shortline, Inc.

VMV Enterprises, Inc.
Vulcan Materials Company

Webster Wood Preserving Co.
Western-Cullen-Hayes, Inc.
Western Plant Services, Inc.
Western States Supply Company, Inc.
Westinghouse Air Brake Company
Wheeling Technologies, Inc.
Wilson & Company
WWIB Transportation Services

XTRA, Inc.

Yankeetown Dock Corporation
Yuasa-Exide, Inc.